

**Before the
Federal Communications Commission
Washington, D.C. 20554**

In the Matter of)	
)	
Amendment of Parts 73 and 74 of the)	MB Docket No. 03-185
Commission's Rules to Establish Rules for Digital)	
Low Power Television, Television Translator, and)	
Television Booster Stations and to Amend Rules)	
for Digital Class A Television Stations)	

To: Chief, Media Bureau

**OPPOSITION OF
THE WIRELESS INTERNET SERVICE PROVIDERS ASSOCIATION**

The Wireless Internet Service Providers Association ("WISPA") hereby opposes the Petition for a Blanket Extension or Waiver ("Petition") filed on February 20, 2014 by the Advanced Television Broadcasting Alliance ("ATBA").¹ As further described herein, WISPA believes that, instead of granting ATBA and all Low Power Television ("LPTV") permittees a blanket waiver of construction deadlines, the Media Bureau ("Bureau") should, consistent with Commission standards, review extension requests on a case-by-case basis following consideration of the particular facts and circumstances presented by the permittee. Accordingly, the Bureau should deny the Petition.

Background

WISPA is the trade association that represents the interests of wireless Internet service providers ("WISPs") that provide fixed IP-based broadband services to consumers, businesses, first responders and anchor institutions across the country. WISPA was founded in 2004 and its

¹ See *Public Notice*, "Media Bureau Seeks Comment on Petition for Blanket Extension or Waiver," MB Docket No. 03-185, DA 14-996 (rel. July 14, 2014). The *Public Notice* established a deadline of August 14, 2014 for the filing of comments regarding the Petition.

rapidly growing membership consists of more than 800 WISPs, vendors, equipment manufacturers, distributors, system integrators and others interested in promoting the growth and delivery of fixed wireless broadband services.

WISPA estimates that more than 3,000 WISPs provide fixed wireless broadband services to more than 3,000,000 people in residences, businesses, hospitals, public safety locations and educational facilities. WISPs primarily rely on the 900 MHz, 2.4 GHz and 5 GHz unlicensed frequencies authorized under Part 15 and the non-exclusive “lightly licensed” 3650-3700 MHz band. In addition, WISPs are among the first to deploy broadband services on unlicensed TV white space spectrum, notwithstanding the legislative and regulatory uncertainty that has raised doubts about the long-term availability of the band for such purposes. TV white space spectrum offers many advantages over the other unlicensed bands because it is not congested and has superior propagation characteristics that enable WISPs to reduce their infrastructure costs.

Many WISPs operate small broadband Internet access systems consisting of a few hundred or a few thousand subscribers. Often, especially in small and rural communities, the local WISP is the only terrestrial source of broadband service because wired technologies like fiber-to-the-home, digital subscriber line and cable Internet access services are not cost-effective to deploy and thus are unavailable. In areas where other broadband options are available, WISPs provide a local-access alternative that benefits customers by fostering competition, lowering costs and improving features.

Retaining access to a sufficient amount of contiguous TV white space spectrum is critical to the continuing ability of WISPs to provide affordable, high-quality fixed broadband service. The success of the WISP industry and the ability of consumers to obtain broadband services from a WISP turn, in no small measure, on how the Commission re-packs and optimizes the TV

band, addresses displacement rights of secondary broadcasters and enforces its rules. WISPA looks forward to participating in upcoming incentive auction proceedings the Commission plans to launch in the near future.² In the meantime, WISPA appreciates the opportunity to comment on the Petition.

Discussion

In its Petition, ATBA asks the Bureau to grant a blanket extension of the construction deadline for new digital LPTV construction permits until September 1, 2015, the current digital conversion deadline that applies to existing analog LPTV stations.³ According to ATBA, between now and September 1, 2015, “LPTV permittees will file, and the FCC will certainly grant, hundreds and perhaps thousands more case-by-case extension applications.”⁴ ATBA asserts that a blanket waiver would reduce the administrative burdens on permittees and the Bureau,⁵ but it also asserts that, in the absence of an extension, a permittee would be required “to build facilities that may be unusable after 2015.”⁶ ATBA frames the issue this way: “The question is whether it makes sense to require one class of LPTV permittees to file extension requests every six months while another class of LPTV permittees is subject to a blanket extension.”⁷

WISPA respectfully submits that the answer to this question is *yes*. In 2011, the Commission acknowledged that there were two different categories of digital LPTV construction permits – one for outstanding flash-cut and digital companion channel construction permits and a

² See *Expanding the Economic and Innovation Opportunities of Spectrum Through Incentive Auctions*, Report and Order, GN Docket No. 12-268, FCC 14-50 (rel. June 2, 2014), at 273 (referencing proceeding on LPTV and translator stations).

³ See Petition at 2.

⁴ *Id.*

⁵ See *id.* at 9.

⁶ *Id.* at 2.

⁷ *Id.* at 2-3.

second for *new* digital construction permits.⁸ The Commission emphasized that “fairness dictates” the grant of an extension to stations with outstanding digital construction permits because they obtained their permits “without knowing the final timetable for completion of the digital transition.”⁹ By contrast, the Commission also stated that new construction permits for unbuilt facilities would remain subject to the three-year construction period and that permittees could seek extensions pursuant to Section 74.788(c).¹⁰ The Commission thus distinguished between analog stations that were already operating and new digital construction permits for which no license had been issued.

On reconsideration, the Commission rejected the same argument that ATBA asserts here, stating that:

Decisions on whether to grant an extension of a digital low power construction permit are made on an individual basis, taking into account the permittees’ *particular facts and circumstances*. *Permittees desiring to rely on the Commission’s ongoing incentive auction as a basis for the grant of an extension should make a showing based upon the criteria set forth in the rules and demonstrate in their extension application (i) how such circumstance has delayed their construction, (ii) how it was unforeseeable or beyond their control and (iii) how, despite this delay, they have taken all reasonable steps to resolve the problem expeditiously.*¹¹

Despite the clarity of this reasoned judgment, ATBA asks the Bureau to depart from and reconsider the Commission’s adopted policy.

The Bureau should reject ATBA’s request and continue to process individual extension applications as they are filed in a manner consistent with Commission standards. While

⁸ See *Amendment of Parts 73 and 74 of the Commission’s Rules for Digital Low Power Television, Television Translator, and Television Booster Stations and to Amend Rules for Digital Class A Television Stations*, Second Report and Order, 26 FCC Rcd 10732 (2011) (“*Second Report and Order*”).

⁹ *Id.* at 10739.

¹⁰ See *id.* at n.37.

¹¹ *Amendment of Parts 73 and 74 of the Commission’s Rules for Digital Low Power Television, Television Translator, and Television Booster Stations and to Amend Rules for Digital Class A Television Stations*, Second Memorandum Opinion and Order, 28 FCC Rcd 14412 (2013) (“*Second MO&O*”) (emphases added).

consideration of extension requests may have historically been lax, as ATBA suggests,¹² this practice does not warrant a waiver of permittees' obligations to comply with the extension standards or the Bureau's abdication of the administrative duties delegated to it by the full Commission.

Moreover, ATBA's claim about the potential for facilities to be "unusable" after the September 1, 2015 deadline is unconvincing. In filing their applications, LPTV applicants accepted the obligations and consequences of secondary status, including the potential that they could be displaced by a licensee with primary status or be eliminated if no channel is available. These threats have always been present, both before and after the incentive auction proceeding was initiated, and the Commission made specific reference to this fact in the *Second MO&O*. Although use of unlicensed spectrum is subject to the rights of primary and secondary stations this does not mean that the Bureau should continue to approve extension requests that fail to comply with the Commission's standards.

Instead of granting a blanket extension or acting on cursory individual extension requests, the Bureau should carefully follow the standards the Commission adopted and directed it to enforce. At a time when WISPs and others have a keen interest in using vacant TV band spectrum to provide fixed broadband services, LPTV permittees should not be permitted to get a free pass without explaining, consistent with the *Second MO&O*, how the incentive auction proceeding has delayed construction and was unforeseeable or beyond their control, with a demonstration of those steps they have taken to resolve the problem expeditiously. If a permittee cannot make its case on the merits, the Bureau should not preserve the permit as a "paper station," and the permittee should not have an opportunity to file a displacement application that could block the ability of others to use the spectrum.

¹² See Petition at 6.

Conclusion

The Bureau should deny ATBA's request for a blanket waiver of the construction deadline for new LPTV construction permits, and instead continue to process extension requests on a case-by-case basis. The Bureau also should review extension requests in a manner consistent with Commission directives.

Respectfully submitted,

WIRELESS INTERNET SERVICE PROVIDERS ASSOCIATION

August 14, 2014

By: */s/ Chuck Hogg, President*
/s/ Alex Phillips, FCC Committee Chair
/s/ Jack Unger, Technical Consultant

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CERTIFICATE OF SERVICE

I, Alex Phillips, FCC Committee Chair for WISPA, hereby certify that on this 14th day of August, 2014, I served a true copy of the foregoing Opposition to Petition for a Blanket Extension or Waiver of the Advanced Television Broadcasting Alliance by USPS First Class Mail, addressed to the following:

Louis Libin, Executive Director
Advanced Television Broadcasting Alliance
382 Forest Avenue
Woodmere, NY 11598

/s/ Alex Phillips
Alex Phillips